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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966.

No. 1272

GREEN STREET ASSOCIATION, AN ILLINOIS CORPORATION, JAMES BATTS, ET AL.,
Petitioner,

vs.

RICHARD J. DALEY, ET AL.,
Respondents.

OPPOSITION BRIEF OF RESPONDENTS, RICHARD J. DALEY, CITY OF CHICAGO, DEPARTMENT OF URBAN RENEWAL OF THE CITY OF CHICAGO AND LEWIS W. HILL.

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INDEX.

	PAGE
Questions Presented	1
Statement of the Case	3
Reasons for Denying the Writ	8
I. No conflict with decisions of this Court is involved	8
II. No conflict with decision of the Fifth Circuit is involved	12
III. No important public questions concerning the role of federal and local officials is involved	16
Conclusion	18

Authorities Cited.

Amalgamated Clothing Workers v. Richman Bros. Co., (5th Cir. 1967)	15
Bossier Parish School Board v. Lemon, 370 F. 2d 847 (5th Cir. 1957)	15
Carver Progressive Club v. Miriana, 192 F. Supp. 825 (E. D. Mich. 1960) aff'd. per curiam 288 F. 2d 889 (6th Cir. 1961), cert. denied 368 U. S. 818 (1961)	12
Deerfield Park District v. Progress Development Corp., 22 Ill. 2d 132 (1961); also 26 Ill. 2d 296 (1962)	11, 12
Douglas v. City of Jeannette, 319 U. S. 157 (1943), 63 S. Ct. 877	11
Georgia v. Chattanooga, 264 U. S. 472 (1924)	12
Green St. Ass'n v. Daley, 250 F. Supp. 139 (N. D. Ill. 1966)	13, 14

Hanna v. Home Ins. Co., 281 F. 2d 298 (5th Cir. 1960), cert. denied, 365 U. S. 838, reh. den. 366 U. S. 955.. 11

Harrison-Halsted Community Group v. H. H. F A., 310 F. 2d 99 (7th Cir. 1962) cert. denied 373 U. S. 914 (1963) 8, 12, 15

Hague v. C. I. O., 307 U. S. 496 (1939), 59 S. Ct. 954.. 11

Hoffman v. Stevens, 177 F. Supp. 898 (M. D. Pa. 1959) 12

Holt v. Indiana Mfg. Co., 176 U. S. 68 (1899)..... 11

Jennings v. Nester, 217 F. 2d 153 (7th Cir. 1954), cert. denied 349 U. S. 958..... 11

McNeese v. Board of Education, 373 U. S. 668 (1963) 9

Monroe v. Pape, 365 U. S. 167 (1961), 81 S. Ct. 473..9, 11

National Quarries Co. v. Detroit T. & I. R. R. Co., 10 F. 2d 139 (6th Cir. 1926)..... 12

Orient Ins. Co. v. Daggs, 172 U. S. 557 (1898)..... 11

Peo. of the State of New York v. Galamison, 342 F. 2d 255 (1965).....17, 18

Progress Development Corporation v. Mitchell, 286 F. 2d 222 (7th Cir. 1961); also 219 F. Supp. 156 (remand) 11, 12

Selover Bates & Co. v. Walsh, 226 U. S. 112 (1912).... 11

Slaughter House Cases, 16 Wall. 36 (U. S.) (1872).. 11

Snowden v. Hughes, 321 U. S. 1 (1944), 64 S. Ct. 397..11, 14

Southern California Petroleum Corp. v. Harper, 273 F. 2d 815 (5th Cir. 1960)..... 8

Western Turf Assoc. v. Greenberg, 204 U. S. 359 (1907) 11

OTHER AUTHORITIES CITED.

42 U. S. C. § 1982, 1983 10
42 U. S. C. § 1455(c) 15
42 U. S. C. § 2000(d) 14, 15
Nichols on Eminent Domain (3rd Rev. Ed.) Vol. 1, Sec. 4.11; Vol. 2, Sec. 7.4 10
Chicago Land Clearance Commission Reports: Ill. R-10 Feb. 7, 1958; Ill. R-51 Oct. 13, 1961; Ill. R-3 Aug. 15, 1957 16
Duncan and Hauser, Housing a Metropolis—Chicago 85-86 (1960) 16, 17
Greer, Urban Renewal and American Cities 56 16
Housing and Home Finance Agency Annual Report 1964, pp. 372-396 16

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To the Honorable, The Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Respondents pray that the writ of certiorari be denied.

QUESTIONS PRESENTED.

In the first two paragraphs of their petition under this heading, petitioners make statements concerning the case, which are grossly inaccurate. These inaccuracies and certain important omissions which occur in petitioners' State-

ment of the Case will be commented upon in the course of the argument. These inaccuracies and omissions misinterpret the true basis and grounds for the decisions below. The true questions presented are:

1. Does the complaint state a federal claim for equitable relief or a substantial federal question when it alleges that federal civil rights will be violated by virtue of the exercise of the power of eminent domain under the following circumstances, to-wit: notwithstanding the existence of a valid public purpose for the exercise of eminent domain, allegations are made in an unverified complaint, on information and belief, that certain unknown commercial interests conspired to remove negroes from a certain area (which removal would effect a violation of the civil rights of negroes to own, hold or enjoy property) and that the said unknown commercial interests motivated and induced the Mayor of a city to exercise the power of eminent domain, thereby effecting the removal of negro citizens from the condemned property?

2. Does the complaint state a federal claim for equitable relief under Section 601 of the Civil Rights Act of 1964 (42 U. S. C. § 2000(d)) when it asserts that an urban renewal relocation plan (which plan is a requisite of a federal subsidy grant and which has been approved by the federal authorities) discriminates because de facto segregated housing exists in the City and the plan, in reciting statistics of what housing is potentially available, includes available housing in such segregated areas?

STATEMENT OF THE CASE.

Because the petitioners have made numerous statements which are either in error or inaccurate, and have omitted many significant facts and matters of the utmost relevance in understanding the decisions below and the action herein, the following Statement of the Case is submitted.

The petitioners sought to have declared invalid the Central Englewood Project of the Englewood Conservation Area on the ground that, on information and belief and in an unverified complaint, the project was the result of a conspiracy between unknown commercial interests and public officials to violate civil rights.

The Central Englewood Project is but a small part of a massive overall urban renewal plan intended to upgrade and improve a large conservation area of the south side of Chicago. The overall plan covers an area of Chicago designated the Englewood Conservation Area. The total Englewood boundaries encompass an area of 3,060 acres with a total population of 140,000 people who occupy more than 10,000 buildings. Within this large area several individual projects are presently in execution (of which the Central Englewood Project, the one involved in this case, is one). Some of the individual projects have already been completed and other projects are in the planning stage. Among the other individual projects in the total Englewood Area Plan are slum clearance and redevelopment for private housing on a nondiscriminatory basis, expansion of the Chicago Teacher's College campus, low rent public housing projects, major rehabilitation of residential and industrial areas, improvement of major thoroughfares and diversion of heavy traffic from residential areas, expansion of five existing elementary schools, construction of eight new schools, concurrent redistricting, location of new and additional park facilities, consolidation

and improvement of other regional shopping centers and neighborhood shopping facilities.

The Englewood Conservation Area was designated and approved as such pursuant to the Statutes of Illinois by the Community Conservation Board on September 13, 1956, and was based upon and involved studies long preceding that date. The conservation plan for the total Englewood area was approved by the City Council of the City of Chicago on June 15, 1962. The individual projects within that total area have been approved at various times by the City and the other public bodies charged with the statutory powers and duties relative to the various phases of the overall plan. The Central Englewood Project (the subject of the action herein) was approved by ordinance on July 8, 1964, as subsequently amended.

The Central Englewood Project, the subject of this case, involves the construction and reconstruction of various streets, by-passes, parking lots, pedestrian arcade and mall improvements associated with and incident to rehabilitating and revitalizing the major regional shopping center which services the entire Englewood area. The entire *project* area, including the many structures which are not being taken, covers about 2½% of the total *conservation* area. This project, as part of the overall plan, will require the acquisition of some 300 buildings, consisting of some 600 dwelling units 85% of which are *today* inhabited by citizens of the Negro race. By plaintiffs' own allegations the area was predominantly non-Negro in 1953, the time the overall plan and project was being planned and formally established and the time when the conspiracy was allegedly formed. Plaintiffs seek to enjoin the acquisitions and to have the plan for the Central Englewood Project declared invalid on the basis and grounds that it violates their civil rights.

Petitioners did not allege how many of the structures or dwelling units they represent nor what interests each of the plaintiffs has in the property involved (only eight would appear to involve ownership or tenancies on other than a month to month basis, or 2⅔% of the buildings in the *project* area, and 8/100 of 1% of the total buildings in the conservation area). A compilation of the names and addresses on Exhibit A to the Complaint would indicate all plaintiffs, whatever their interest, reside in 56 of the total 300 buildings in the Central Englewood Project (or 18%) which are being acquired and of the total of in excess of 10,000 buildings in the Englewood Conservation Area only ½ of 1%. Assuming each plaintiff listed singly at an address on Exhibit A and each combination of plaintiffs named at an address represents one dwelling unit, plaintiffs would occupy 93 of the total 600 units in the project area which are being acquired (or 15.5%), and of the total of over 20,000 dwelling units in the area only 4/10 of 1%.

In this Court petitioners rely on two of the original five count complaint. In the Court of Appeals petitioners relied on three of the original five counts. Relative to Count I, relied on in their petition herein, they assert that a conspiracy to deprive them of their rights to own, lease, hold and enjoy property was originated in 1953. Petitioners do not allege, however, that they were residents or inhabitants of the area at that time, nor at what time they did become residents. Petitioners allege that the identity of the persons who originated the conspiracy are unknown, but that these persons are apparently associated with "large commercial interests" and that, in furtherance of the conspiracy, after the publication in 1953 of a Chicago Plan Commission study relating to shopping centers, the

unknown "they" planned to create a no-Negro zone around this particular shopping area.[1] Petitioners contend that defendants Mayor Daley and Lewis W. Hill were induced to enter into this conspiracy, but they apparently failed to remember that Richard J. Daley was not the mayor of Chicago in 1953 nor for two years thereafter, nor was Lewis W. Hill the chief executive officer of the Department of Urban Renewal (or its predecessor agency) until twelve years later. Petitioners also assert that the City of Chicago and the Department of Urban Renewal were induced to enter into the conspiracy but they fail to allege how a municipality or its agency, as distinguished from its officers or officials, can conspire and no other officers, executive or legislative, are made defendants to the complaint. In addition, petitioners fail to allege the damage or injury they have incurred as a result of this asserted conspiracy (which is an essential element) and admit it has not as yet been inflicted. While petitioners assert they have no adequate remedy at law, they fail to allege any facts upon which this assertion is based.

Relative to Count IV relied on by petitioners herein, the thrust of the Count is that the relocation plan (being one of the statutory requisites of the federal subsidy act), discriminates in that it proposes relocation based on race. In their complaint petitioners conclude that an "information and belief" relocation was "proposed" to be made based on race. It is interesting to note that in their petition herein they state *now* that the relocation plan "expressly provides" for relocation based on race. This latter assertion is totally false. As to the former assertion, there are no facts alleged in the complaint upon which it is based. It is clear from the complaint that petitioners based

1. Since the cleared land in this particular location is to be redeveloped with streets and parking lots, the so-called "no-negro" zone around the shopping center would be more fairly characterized a "no person" zone.

this charge of relocation "proposed" to be made based on race on *their* own fallacious conclusions. The relocation plan, in discussing available housing, recognizes the existence of racial concentration in existing housing patterns in presenting the *probable* statistics of available facilities. It in no way approves or condones the situation, it merely states the statistics of housing under the existing conditions. Based on that fact alone, the petitioners assert that the City proposes to relocate the displacees on the basis of their race. In addition to this totally unwarranted conclusion, the fallacy of petitioners' assertion is that it fails to recognize that the City does not and cannot *require* displacees to relocate in any particular location—they are free to relocate wherever they please. The City merely determines in the required relocation plan what facilities are potentially available.

REASONS FOR DENYING THE WRIT.

I.

NO CONFLICT WITH DECISIONS OF THIS COURT IS INVOLVED.

Petitioners' assertion that the decision below is in conflict with decisions of this Court relative to the right to a federal forum for charged civil rights violations is totally without merit.

The argument is based on a misinterpretation (or tortured misconstruction) that the decisions below held that Count I was legally sufficient, but was barred by the existence of a state remedy. Needless to say, such was not the basis of the decision. The Court of Appeals held that no federal claim was stated nor substantial federal question involved under the specific allegations made of a violation of civil rights through the exercise of the state power of eminent domain. The court's comments concerning the availability of the state forum for protection of federal civil rights were obviously an articulation of the principle that, while not all claimed violations of federal rights give rise to federal jurisdiction, adequate safeguards exist for their protection.[2] The decision of this Court relative to the right to a federal forum for civil rights violations are predicated on the existence of a legally sufficient or actionable claim charging civil rights violation. The soundnes of the decision below relative to the absence of a federal claim or question in this case is discussed hereafter, but for the

2. *Amalgamated Clothing Workers* v. *Richman Bros. Co.*, 348 U. S. 511, 518-19 (1955); *Southern California Petroleum Corp.* v. *Harper*, 273 F. 2d 715 (5th Cir. 1960); *Harrison-Halsted Community Group* v. *H. H. F. A.*, 310 F. 2d 99 (7th Cir. 1962) *cert. den.* 373 U. S. 914 (1963).

purpose of this discussion, the Court of Appeals held that an actionable civil rights violation was not charged, accordingly, the principle urged by petitioners that they have a right to a federal forum, is not relevant here.

It is to be noted that *McNeese* v. *Board of Education*, 373 U. S. 688 (1963) and *Monroe* v. *Pape*, 365 U. S. 167 (1961) relied on by petitioners are in no respect relevant, since in those cases, unlike this case, a legally sufficient charge of civil rights violation was made.

In the *McNeese* case (373 U. S. 668) the existence of a federal claim and question was implicit in the case since it was concerned with public school segregation which has long since been settled as involving an actionable denial of equal protection through state power. In the *Monroe* case (365 U. S. 167), a federal claim and question was also implicitly present (assuming that unauthorized and illegal acts of state officers constituted "state" action) since the case was concerned with unreasonable search and seizure which has also been settled to involve potential denial of due process through state power.

In the case at bar, however, the question at issue was whether the specific charge of violation of federal rights through the exercise of the state power of eminent domain was a denial of due process, equal protection or privileges and immunities under the 14th Amendment and thus stated a federal claim or question. The irrelevance of the *McNeese* and *Monroe* cases, in which the specific exercise of the state power involved in those cases was established to be such a denial (and thus a federal claim or question) is clear.

In the case at bar, the question presented by the decision below on Count I is: was a federal claim for equitable relief stated, or did a substantial federal question arise, by virtue of the exercise of the power of eminent domain,

under the circumstances charged? The circumstances being, that, notwithstanding the existence of a valid public purpose for the exercise of eminent domain, on information and belief, certain unknown commercial interests are alleged to have conspired to remove negro citizens from a certain area (which removal would effect a violation of the civil rights of negroes to own, hold or enjoy property) and the said unknown commercial interests induced the mayor of a city and an officer of an executive department of the city to exercise the power of eminent domain, thereby rendering imminent the said removal and violation of civil rights.

Apart from the bizarre nature of the conspiracy charged[3] and the rather glaring defect in the assertion that officers of the executive branch of government can exercise the power of eminent domain,[4] the courts below obviously construed the pleadings most favorably to petitioners when it considered the case as involving a charge of violation of federal rights incident to the exercise of the state power of eminent domain.

The decision of the Court of Appeals below is irrefutably sound and completely consistent with decisions of this Court relating to claimed violation of federal rights incident to exercise of state powers. It is fundamental that for any claimed infringement of a federal right to be ac-

3. See Statement of Case above (pp. 3-7) for the facts concerning the nature and scope of the entire urban renewal plan involved, its relation to the subject project, and the history of its origin and implementation over almost a twenty year period.

In the court below questions were briefed and argued as to the many technical deficiencies of the count from the standpoint of insufficient allegations concerning parties, intent, overt acts, Sections 1982 and 1983 of Title 42 and the interrelation of the Civil Rights Acts and the Fourteenth Amendment.

4. It is established that the power of Eminent Domain is legislative in nature and not executive. Nichols on Eminent Domain (3rd Rev. Ed.) Vol. 1, Sec. 4.11; Vol. 2, Sec. 7.4.

tionable, it must effect a denial of due process, equal protection or privileges and immunities under the 14th Amendment. *Monroe* v. *Pape,* 365 U. S. 167, 81 S. Ct. 473; *Snowden* v. *Hughes,* 321 U. S. 1, 64 S. Ct. 397; *Douglas* v. *City of Jeannette,* 319 U. S. 157, 63 S. Ct. 877; *Hague* v. *C. I. O.,* 307 U. S. 496, 59 S. Ct. 954.

The only authority offered by petitioners for their assertion that a claim can be stated involving eminent domain is the case of *Progress Development* v. *Mitchell,* 286 F. 2d 222 (7th Cir. 1961); also 219 F. Supp. (remand). Presumably, the petitioners bottom their claim on a denial of equal protection, since that was the basis in *Progress.*[5] In its decision, the Court of Appeals clearly articulated the considerations underlying the limited scope of judicial review of the Legislative Power of Eminent Domain and the nature and scope of the exceptional case like *Progress* wherein a potential denial of equal protection *might* be involved, rendering the power of eminent domain subject to prior scrutiny by the federal courts.[6]

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5. In the Court of Appeals the want of merit in any argument based on due process was briefed and argued. *Jennings* v. *Nester,* 217 F. 2d 153 (7th Cir. 1954); *cert. den.* 349 U. S. 958 and *Hanna* v. *Home Ins. Co.,* 281 F. 2d 298 (5th Cir. 1960), *cert. den.* 365 U. S. 838, *reh. den.* 366 U. S. 955. Further, that any argument based on privileges and immunities would have been settled by the *Slaughter House* cases, 16 Wall. 36 (U. S.) (1872) as to the corporate petitioner, and as to the individual petitioners by *Orient Ins.* v. *Daggs,* 172 U. S. 557; *Holt* v. *Indiana Mfg. Co.,* 176 U. S. 68; *Western Turf Assoc.* v. *Greenberg,* 204 U. S. 359; *Selover, Bates & Co.* v. *Walsh,* 226 U. S. 112.

6. Interestingly enough, the federal claim in the *Progress* case (286 F. 2d 222) was finally disposed of on the merits in the state court as a result of the chronology of the subsequent litigation. In *Deerfield Park District* v. *Progress Development Corporation,* 22 Ill. 2d 132 (1961), the Illinois Supreme Court held that the charge of "sole and exclusive discriminatory purpose" for the condemnation was sufficient to raise the question of a denial of equal protection and therefore the validity of the state condemnation proceedings. Accordingly, the case was remanded to insure that *Progress* had full opportunity to prove this conspiracy changed. In the sec-

Petitioners argue anomalously in their petition here that the Court of Appeals of the 7th Circuit has erred in understanding its decision in *Progress*—that its decision below does not reflect what that Court meant in the *Progress* case! As discussed the decision of the Court of Appeals, holding that no claim or substantial federal question existed in the charge of an abuse of eminent domain powers under the facts herein, is undeniably sound and completely consistent with past decisions of this Court and the lower federal courts. *Georgia* v. *City of Chattanooga,* 264 U. S. 472 (1924); *National Quarries Co.* v. *Detroit, T. & I. R. R. Co.,* 10 F. 2d 139 (6th Cir. 1926); *Carver Progressive Club* v. *Miriana,* 192 F. Supp. 825 (E. D. Mich. 1960), aff'd per curiam, 288 F. 2d 889 (6th Cir. 1961), cert. denied, 368 U. S. 818 (1961); *Hoffman* v. *Stevens,* 177 F. Supp. 898 (M. D. Pa. 1959). *Accord, Harrison-Halsted Community Group, Inc.* v. *Housing & Home Fin. Agency,* 310 F. 2d 99 (7th Cir. 1962), cert. den. 373 914 (1963).

II.

NO CONFLICT WITH A DECISION OF THE FIFTH CIRCUIT IS INVOLVED.

Petitioners' assertion that the decision below is in conflict with one of the Fifth Circuit relative to Section 601 of the Civil Rights Act of 1964 is totally without merit.

The question presented by Count IV of this Complaint was whether a federal claim was stated in the charge that civil rights were (or could be) violated under an urban

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ond appeal (26 Ill. 2d 296 (1962) the Illinois Supreme Court held "with the evidence door thus opened to its widest point" there was no evidence of conspiracy. Subsequently, the Federal case came on for hearing after remand, and the District Court dismissed the complaint on the grounds of res judicata stating that full opportunity had been afforded in the state court to prove the conspiracy. (219 F. Supp. 156.)

renewal relocation plan by virtue of the fact that the plan in reciting the statistics of available housing included housing in racially concentrated areas.

In holding that the count failed to state a claim upon which relief could be granted, the Court of Appeals stated (Appendix A, Petitioners' Brief, Opinion of Court of Appeals, p. 29):

> "It does not, and realistically cannot, allege that the relocation machinery established by the Plan forces or compels displacees . . . to relocate in segregated areas of the city . . . The city admittedly could not require relocation in any particular area; it may only determine what housing is available in fact, and offer whatever assistance it can in furnishing this information to displacees."

The District Court stated relative to the Petitioner's argument on the relocation plan:

> "The allegations that the relocation plan tends to foster and promote segregation are a fallacious smoke screen thrown up to obscure the true facts. The Central Englewood area cannot be considered alone as an entity apart from the overall Englewood Conservation area. If Negroes constitute 85% of the population in the plaintiffs' area, a transfer to some other neighborhood be it Negro or white, could be little worse percentage-wise, racially, than that which exists in Central Englewood today. Any proposed urban renewal plan requires displacement and relocation of persons who will be discriminated against as to the race of which there is a plurality inasmuch as there is always a plurality of one race in a neighborhood. If this argument were sustained, it would make every federally aided urban renewal plan illegal according to the Civil Rights Act of 1964. Should this court sustain plaintiffs' right to maintain this action it would prevent the face lifting of neighborhoods which most sorely need it and would tend to perpetuate segregation, the very thing which the Civil Rights Act of 1964 was intended to prevent.

> This court is aware of the problems to be solved in the relocation of persons displaced by urban renewal plans. However, if this litigation were permitted to restrain the civic action, it would be standing in the path of progress already made and perpetuating the de facto segregation already existing to the detriment of those that this action purportedly seeks to protect." *Green Street Ass'n* v. *Daley,* 250 F. Supp. 139 (N. D. Ill. 1966).

In essence, the Court of Appeals held that there were no discriminatory acts or conduct charged under the count and thus that the count failed to state a claim.

Petitioners herein assert that, notwithstanding the absence of any intentional discrimination in the relocation plan, and, notwithstanding the absence of any force or compulsion in the relocation process; and, notwithstanding the existence of free choice in the individual to accept or reject any relocation information or service, that, nevertheless the plan is discriminatory, in violation of Section 601 and is in conflict with a Fifth Circuit decision.

Relative to petitioners' apparent position that a civil rights violation can arise in the absence of intentionally discriminatory acts or conduct, it is to be noted that petitioners do not favor the Court (or respondents) with any citation of authority. While it would hardly seem necessary to cite authority to refute this somewhat *novel* position of petitioners, it might be noted that this Court observed in *Snowden* v. *Hughes,* 321 U. S. 1, that not every discriminatory act affords the basis of a federal claim but only when such act contains the element of *clear and intentional* discrimination is it actionable.

Relative to the assertion that the plan violates Section 601, petitioners do not argue that Section 601 creates any new or unique legal rights and therefore it would appear that the same deficiency noted above relative to civil rights

violations generally would apply to Section 601—to-wit, the absence of any *intentional discrimination.* The proposition that Section 601 does not create any new legal rights is supported by the very case which petitioners assert is in conflict with the decision below. In *Bossier Parish School Board* v. *Lemon,* 370 F. 2d 847 (5th Cir. 1967) the Court stated relative to Section 601 at page 847:

> "... it ... states the law as laid down by hundreds of decisions, independent of the statute".

Finally, as to petitioners' assertion of a conflict between this case and the Fifth Circuit decision in the *Lemon* case (370 F. 2d 847), it must be noted that the *Lemon* case was a public school desegregation suit. Unlike the case at bar, it involved admittedly intentional discriminatory acts; unlike the case at bar, it involved a conceded federal claim and question in the denial of equal protection through state powers. Petitioners' argument that the *Lemon* case is in conflict with the decision below is based on that case's holding (as an alternate ground for the decision) that standing to sue existed under Section 601. The Court of Appeals in the case at bar did *not* hold that petitioners herein had no standing to sue under Section 601.[7] It held that a claim had not been stated under Section 601 in that discrimination did not exist under the facts alleged in this case. The decision in the *Lemon* case (370 F. 2d 847) is totally distinguishable from the case at bar and in no respect in conflict with the decision below.

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7. The statement concerning "standing," made in its 5th footnote, related to administrative review of agency action under the Administrative Procedure Act and Housing Act of 1949 (42 U.S.C. § 1455(c)). This issue is not relied on as a ground for the petition here since it so well settled contrary to petitioners' position. *Harrison-Halsted Community Group* v. *HHFA,* 310 F. 2d 99 (7th Cir. 1962) *cert. den.* 373 U. S. 914 (1963).

III.

NO IMPORTANT PUBLIC QUESTIONS CONCERNING THE ROLE OF FEDERAL AND LOCAL OFFICIALS ARE INVOLVED.

Petitioners' assertion that the case raises important questions of public officials fostering racial discrimination through urban renewal is, at best, totally without merit.

The argument under this section commences with what, on first reading, purports to be a recitation of some startling and, if true, deplorable facts (none of which were alleged in the original complaint). An aura of reliability is also cast by virtue of the citation of purported authorities. On more careful reading, however, it becomes apparent that the more shocking "fact-like" statements are made *without* citation of authority, and finally, on closer scrutiny, that those statements purportedly authenticated, are not supported by the authority cited, or are quoted out of context.

Without belaboring the point, a few examples are noted by way of illustration. The statement of 500,000 persons displaced (Pet. Brief p. 13) is not supported by the authority cited;[8] the assertion "the majority of whom were Negro" has no citation[9]; the statement "Four times as many dwelling units have been torn down as have been constructed" is supported by the authority cited, but the very next statement in the text is "This is, to be sure, based on projects in being and not projects completed".[10]

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8. In the H & H F A Annual Report 1964, page 372, is a table of Nonfarm Housing Units Started; page 396 is a table of Average Population per Family Unit.

9. To the Contrary, the percentages of relocatees in many projects has been as follows: Harrison-Halsted project 99% white, 1% non-white; Roosevelt-Blue Island project 92% white, 8% non-white; North La Salle project 100% white. Chicago Land Clearance Commission Reports Project Numbers Ill. R-10 Ill. R-51, Ill. R-3, dated Feb. 7, 1958, Oct. 13, 1961, Aug. 15, 1957.

10. Greer, *Urban Renewal & American Cities*, p. 56 (1965).

The text "Housing a Metropolis—Chicago" is cited as authority for the statement ". . . selections of certain sites for urban renewal in *Chicago* . . . have been influenced as much by racial considerations as by concern for the physical conditions of areas or for the City's overall needs" (Pet. Brief p. 14). The text makes an analysis of city-wide demolition statistics involving the years 1950 and 1956 and concludes that based thereon a dwelling with non-white occupants is "somewhat more likely to be demolished" than one occupied by whites. Nowhere in the chapter, however, is there any suggestion of the statistics being related to urban renewal. In fact, the index to the book does not even contain the words "urban renewal"[11]

Petitioners' argument under the section concludes with the apparent plea that public officials should be compelled to effect "integrated relocation". It would appear that Petitioners have not considered the possibility of forced "integrated relocation" itself being discriminatory, nor the ramifications of the separation of powers doctrine in any judicial "compulsion" of legislative or executive officials.

Finally, the quotation utilized by the learned District Court below in his opinion (250 F. Supp. 139) is also appropriate to Petitioners' argument herein. The District Court quotation was:

> "Since the Bill of Rights and the Fourteenth Amendment were intended to safeguard the fundamental rights of individuals against governmental impairment, judges are sorely tempted, when the state's awesome powers must be weighed against the citizen's rights, to stretch the meaning of statutes in order to strike the balance in favor of the individual. But, Justice Cardozo reminded us in his typically poignant language, that a judge is not a knight errant

11. Duncan & Hauser, *Housing a Metropolis*—Chicago (1960).

roaming at will in pursuit of his own idea of beauty or of goodness . . . He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. . . .' "[12]

CONCLUSION.

The petition states no basis for the granting of the writ of certiorari.

Respectfully submitted,

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12. Statement of Judge Irving R. Kaufman in *People of the State of New York* v. *Galamison*, 342 F. 2d 255 (1965), at 273.